COUNCIL AGENDA:



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Angelique Gaeta

Harry Freitas Larry Esquivel

SUBJECT: MEDICAL MARIJUANA -

DATE:

April 29, 2014

COUNCIL DIRECTED REGULATIONS

Approved (

Date

RECOMMENDATION

- (a) Approval of an ordinance of the City of San José repealing suspended Ordinance No. 28958 except for those Sections of Title 20 of the San José Municipal Code related to Zoning Code Verification Certificates previously unsuspended by Ordinance No. 29089, and amending Title 20 by amending Section 20.10.040 of Chapter 20.10, amending Section 20.40.100 of Chapter 20.40; amending Section 20.50.100 of Chapter 20.50, amending Section 20.70.100 of Chapter 20.70, adding a new Part 9.75 to Chapter 20.80, and adding new Sections 20.100.1530, 20.100.1535 and 20.100.1540 to Part 13 of Chapter 20.100, all to establish Land Use regulations pertaining to medical marijuana collectives; and
- Approval of an ordinance of the City of San José amending Title 6 of the San José (b) Municipal Code to add a new Chapter 6.88 to establish a registration process pertaining to medical marijuana collectives; and, to establish regulations pertaining to medical marijuana collectives; and to the individual cultivation and use of medical marijuana.

OUTCOME

Approval of the proposed ordinances would result in the establishment and implementation of a medical marijuana regulatory program (Program), together with related locational siting criteria, as more fully set forth below.

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EXECUTIVE SUMMARY

On December 10, 2013, following the City's receipt of numerous concerns from the community regarding the impact of Collectives illegally operating in San José, the Council directed the Administration to develop a "robust regulatory program" that builds upon the Land Use and Regulatory Ordinances Council previously approved on September 13, 2011 and updates those ordinances to take into consideration and address community and stakeholder concerns. In accordance with the Council direction, the September 13, 2011 ordinances have been updated to ensure they contain language specifically responding to the Council direction.

It is worth noting that the Council has expressed an interest in supporting the compassionate use laws of the state but has grappled with how to regulate dispensaries for almost four years. As with all land use decisions, the Council is charged with making difficult decisions to protect the City's long-term economic goals as well as to ensure the safety of its residents. The Administration, in consultation with the community and other stakeholder groups, including those that represent Collectives, believes the recommendations discussed in this memorandum strike the appropriate balance between allowing safe access by those who need medical marijuana with previous Council direction and the guidance from the United States Attorney General.

BACKGROUND

On September 13, 2011, the Council approved two ordinances regarding medical marijuana establishments operating in San José. One ordinance amended Title 20 of the San José Municipal Code (Code) to establish land use regulations (Land Use Ordinance) for medical marijuana establishments, and one ordinance amended Title 6 of the Code to establish operational requirements (Regulatory Ordinance) for medical marijuana establishments.

On October 28, 2011, medical marijuana advocates filed a Petition for Referendum challenging *only* the Regulatory Ordinance and forcing the Council to either repeal that Regulatory Ordinance or put it to a vote of San José residents.

On November 8, 2011, while it considered its options for the Regulatory Ordinance, the Council suspended the Land Use Ordinance and made it effective only if and when the Regulatory Ordinance actually took effect.

On February 14, 2012, the Council repealed the Regulatory Ordinance. Because the Land Use Ordinance was effective only if the Regulatory Ordinance took effect, the repeal of the Regulatory Ordinance resulted in an indefinite suspension of the Land Use Ordinance and the lack of legal authorization for medical marijuana establishments to operate in San José. As such, all medical marijuana establishments, including but not limited to, collectives, cooperatives, dispensaries and delivery service businesses (hereafter, "Collective(s)") operating in San José are illegal. However, due to the City's limited resources for enforcement, since February

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14, 2012, the Administration has focused its enforcement efforts against those Collectives creating a public nuisance, failing to pay the City's Marijuana Business Tax (MBT)¹ or failing to comply with State law distance requirements.

California Supreme Court Ruling

On May 6, 2013, the California Supreme Court decided the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* and confirmed local governments' land use authority to regulate or entirely ban Collectives.

Guidance From The United States Attorney General

On August 29, 2013, United States Deputy Attorney General James M. Cole issued a memorandum for all United States Attorneys providing guidance on marijuana enforcement ("Enforcement Memorandum"). In that memorandum, Deputy Attorney General Cole stated the following:

"Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels."

The Enforcement Memorandum went on to provide that the Department of Justice is committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way and, "In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;

¹ Regardless of their legal status, all Collectives operating in San José are required to pay the City's MBT, currently 10% of gross receipts, pursuant to Chapter 4.66 of the San José Municipal Code. Payment of these taxes in no way legalizes business activities that are otherwise unlawful in the City.

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• Preventing the growth of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

• Preventing marijuana possession or use on federal property."

The Enforcement Memorandum further provided that "The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice." (Emphasis added.)

Council Direction – December 2013

On December 10, 2013, the Council directed the Administration to:

- (a) Expand its enforcement efforts to include those Collectives located within:
 - (1) 1,000 feet of public and private schools, child daycare centers, churches with child daycare centers, community/recreation centers, parks, libraries and other Collectives;
 - (2) 500 feet of substance abuse rehabilitation centers; and
 - (3) 150 feet of residential uses;

The Council also directed the Administration to return to the Council with a "robust regulatory program" that builds upon the Land Use and Regulatory Ordinances (Ordinances) the Council previously approved on September 13, 2011 and updates those Ordinances by taking into consideration and addressing the following:

- (1) Compliance with the US Attorney General's Enforcement Memorandum.
- (2) Measures to ensure a tightly regulated market in which revenues are tracked and accounted for, effective measures to prevent diversion of marijuana outside of the regulated system, and prohibition of access to marijuana to minors through the prohibition of:
 - a. Sales or transfers to minors;
 - b. Trafficking near areas associated with minors;
 - c. Marketing in a manner that appeals to minors;
 - d. Diversion, directly or indirectly, and purposefully or otherwise, to minors.
- (3) Two options for zones where Collectives can locate: one that is consistent with those zones approved on September 13, 2011 (CG-Commercial General, DPC-Downtown Primary Commercial, LI-Light Industrial and CIC-Combined Industrial Commercial) and one that adds to those zones the IP-Industrial Park zone.
- (4) The buffers delineated by the Council in subparagraph (a) above, with the 150-foot buffer between Collectives and residential uses measured by the foot path of travel.
- (5) Hours of operation from 9:00 a.m. to 9:00 p.m.

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- (6) Prohibition on the location of Collectives on ground floors of buildings within the DPC zone.
- (7) Prohibition on the location of Collectives on all floors of shopping centers located on a parcel or parcels totaling over 40 acres.
- (8) Registration of only those Collectives that:
 - a. Can show proof that they were in operation and paying the MBT as of a certain date;
 - b. Were located in compliance with the above zoning districts as of a certain date, or can secure a site in compliance with the above zoning districts; and,
 - c. Pass a criminal background check.
- (9) Preference for Collectives:
 - a. Collectives operating in compliance with zoning and operational requirements as of certain date shall have preference for registration.
 - b. If two Collectives are in compliance and in operation as of certain date, preference shall go to that Collective applying first in time.
- (10) The issuance of a Zoning Verification Certificate to those located in zoning districts identified above.
- (11)Expiration of registration and required renewal of registration.
- (12)Zero tolerance for serious violations of the program.
- (13) Authorization for City to audit Collectives' books.
- (14)Cost recovery fees for the program.
- (15)Prohibition of on-site consumption.
- (16)Exploration of development of an underage decoy program similar to that used by the City to deal with sales of tobacco to minors.
- (17)Assurance that all restrictions placed on smoking tobacco also apply to smoking marijuana.
- (18) Allow off-site cultivation with controls to comply with the US Attorney General's Enforcement Memorandum and protect existing uses from negative impacts.
- (19) Allow cultivation in the CIC, LI and HI zones subject to same restrictions as wineries and breweries (with off-sale only as incidental uses and with sufficient controls to comply with the Enforcement Memorandum and protect existing users from negative impacts).
- (20)Disqualify from registration any Collective and its owners and managers that have been the subject of three or more documented or verified code violations and/or nuisance activities within one year of the time of their application for registration.
- (21)Prohibit the siting of any Collective on any parcel that has been the subject of three or more documented and verified code violations and/or nuisance activities within one year of the time in which the site is being considered for a Zoning Verification Certificate.
- (22) Explore restricting certain means of advertising (e.g., sign twirlers).
- (23)Replace the word "church" with "houses of worship" throughout the regulations and include all houses of worship, not just those with child daycare.
- (24)Explore prohibiting anyone running for office in the City of San José from receiving any monies connected with Collectives.
- (25)Explore scenarios to increase the buffer between Collectives and residential from 150 ft to one mile.

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(26)Referring to the prohibition in shopping centers located on parcels over 40 acres (Councilmember Rocha memorandum), explore options to make it congruent with other definitions.

(27)Explore scenarios for a prohibition around assembly uses and 1,000 feet from all sensitive uses (e.g., residential and school uses)

Neighborhoods Commission

On January 8, 2014, the Neighborhoods Commission requested that in addition to the above list of items, the Administration also explore strict prohibitions on the resale of medical marijuana by members of Collectives to members of the public; the use of air scrubbers in facilities where medical marijuana is cultivated; the requirement for the Administration to connect with the Office of the Inspector General as part of the back-grounding process; and a public hearing for the public to weigh in prior to the City "registering" a Collective.

Planning Commission Hearing

On April 23, 2014, the Planning Commission conducted a public hearing to consider the updated Land Use Ordinance. A separate report from the Planning Commission will be submitted to the Council under separate cover.

With regard to proper zones for the location of the dispensing of medical marijuana, the Planning Commission agreed with Council's direction that the designated zoning districts should include those outlined in the 2011 original Land Use Ordinance (DG, DPC, LI and CIC) plus the IP zone. The Planning Commission also recommended the addition of the CN-Commercial Neighborhood zone and the CO-Commercial Office zone. With regard to the proper zoning districts for cultivation, the Planning Commission again agreed with the Council's direction that the LI, CIC and HI-Heavy Industrial zones were appropriate. For the buffers and other restrictions directed by the Council, the Commission agreed those, too, were appropriate and that the 150 foot buffer required between Collectives and Residential Uses be measured by the foot path of travel. The Planning Commission went on to recommend that the Council consider the creation of a medical marijuana commission to draft regulations and issue exemptions when a Collective cannot meet the zoning, buffer or other land use restrictions.

Community & Stakeholder Engagement

As detailed in prior memoranda, since April 2010 and continuing to present day, the Administration has held numerous public outreach meetings, had on-going discussions with advocates and lobbyists for the Collectives, and visited a host of Collective sites. The Administration has also received and reviewed written materials from a number of Collectives and groups including, but not limited to: MC3; Americans for Safe Access; Elemental Wellness Center; Danielle Piorslin; Purple Lotus Patient Center; and, Sensible San José. In addition, the Administration has given presentations to and/or met with members of the following community groups and organizations: the Neighborhoods Commission, the Mayor's Gang Prevention Task

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Force, the Santa Clara County Department of Alcohol and Drug Services, the Santa Clara County District Attorney's Office, the Santa Clara County Public Defender's Office, the Juvenile Justice Systems Collaborative Prevention and Programs Work Group, and the Santa Clara County Executive's Office.

A Closed-Loop System

Over the past year, certain representatives for the Collectives have claimed that 90% of the marijuana being dispensed in San José is being cultivated outside of the City limits. In a meeting with an individual representing a number of Collectives in San José, the representative requested that the Administration defer any requirement of a closed-loop system requiring Collectives to cultivate only in San José and only dispense marijuana that was cultivated by the Collective in San José. According to the representative, the Collectives may obtaining a percentage of their marijuana, either directly or indirectly, from "cartels" and, as such, needed time to build up their own supply to be able to provide to their membership.

Increased Use of Marijuana by Teenagers

During discussions with community groups, the following inquiries and concerns were shared:

- Youth using marijuana risk the permanent loss of 6-8 IQ points;
- Numerous studies have found a link between teen marijuana use and psychoses or schizophrenia;
- Youth that smoke marijuana every weekend for two years are 6 times more likely to drop out of high school, more than 3 times less likely to enter college, and 4 times less likely to earn a college degree;
- 6% of high school students surveyed said they get their marijuana directly from Collectives operating in San José;
- 34% of high school students surveyed said they get their marijuana from someone with a membership to a Collective in San José;
- 45% of 12th graders have used marijuana, with 23% having used in the last 30 days;
- 1 in every 15 high school seniors is a daily or near-daily user of marijuana;
- The number of car fatalities among youth driving under the influence of marijuana has tripled in the last ten years; and
- The dramatic increase in suspensions in high schools related to the use and possession of marijuana.

Higher THC Content

The Santa Clara County Department of Alcohol and Drug Services also expressed concern with the increase in the THC levels. Studies show that since 1972, the average THC content of marijuana has soared from less than 1% to 3 - 4% in the 1990s, to nearly 13% today, with the most potent strains having a THC content of as high as 37%.

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Qualified Patients & Medical Marijuana Dispensed

The community groups further inquired whether the City could require Collective members to obtain the state marijuana identification card from the County to help ensure the member is a qualified patient and to help the City track revenues and the amount of marijuana being dispensed in the County.

April 26, 2014 Community Discussion

Finally, on April 26, 2014, the Administration held a community discussion to provide an overview of the Council's December 10, 2013 direction, the Planning Commission's April 23, 2014 recommendations, and the Administration's recommendations in light of the above information. Approximately 200 individuals attended the meeting, with the majority of those participating in the discussion advocates of medical marijuana. During the discussion, medical marijuana advocates and the community raised the following concerns:

- Which zones Collectives should be allowed to locate in each Collective submitted that the zone their dispensary was located in was the proper zone;
- The distance between residential uses and Collectives should be measured using the foot path of travel;
- The Council should create a medical marijuana commission to address land use and operational regulations;
- Why Collectives were required to pay the MBT given that the City considered their operations to be "illegal";
- Candidates running for office in San José should be allowed to accept funds from Collectives; and,
- Collectives should be required to engage in clean, organic cultivation of medical marijuana.
- Collectives being prohibited from dispensing medical marijuana to individuals under the age of 21;
- Tracking where the medical marijuana comes from;
- Responsible management of the Collective activities so that they do not create a public nuisance;
- The process of checking the background of those involved in a Collective be as thorough as the process used with regards to liquor licenses; and
- Maintaining proper buffers between individual Collectives.

ANALYSIS

For ease of discussion, attached as "Exhibit A" to this memorandum is a table providing a sideby-side comparison of the provisions the Council directed the Administration to include in the updated Ordinances versus the recommendations of the Planning Commission and the

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Administration, to the extent that either of those are different from the Council's direction. In addition, only those areas where the Planning Commission or the Administration has made a recommendation that differs from the Council's direction will be discussed here. However staff will be available at the Council meeting to answer questions and receive input on those parameters. Finally, this memorandum will include a brief discussion on other options the Administration was asked to explore for land use and operational regulations.²

The Updated Land Use Ordinance (Where Collectives Locate)

The Administration has updated and refined the 2011 Land Use Ordinance as follows:

Maximum Number

Unlike the 2011 Ordinances which included a cap of 10 Collectives allowed to operate in the City, the Council did not direct a numeric limit be included in the updated Ordinances. Instead, appropriate zoning districts, buffer zones, and other controls will determine the number of establishments operating in San José. As a consequence, both Ordinances have been updated to eliminate the cap. However, this does not preclude the Council from considering a cap on the number of Collectives in the future.

Zoning Districts

As discussed, the Council identified four zoning districts as being appropriate for Collectives to dispense medical marijuana from: CG, DPC, CIC and LI. The Administration agrees that these zones are appropriate.

The Council also asked for an alternative option which would include the above zoning districts and the IP-Industrial Park zoning district. The Planning Commission agreed with that addition. However, the IP district is intended for research and development, manufacturing, offices, and other premier economic development activities. Given the Envision San José 2040 General Plan's emphasis on job creation to improve the City's fiscal health, the Administration is not recommending the IP District for Collectives. In fact, the City recently approved a Planning Permit for a 2 million square foot campus in North San José. Collectives as a neighboring use would not be conducive to attracting additional corporate headquarters and campuses to North San José, Edenvale, Evergreen, or North Coyote Valley.

In addition to recommending that IP be added as an appropriate zoning district for dispensaries, the Planning Commission also recommended CN and CO zones be added to the list. This recommendation would result in all but one (CP-Commercial Pedestrian) non-residential zoning

² The Administration has previously provided to Council comprehensive reports regarding the specifics of the Ordinances approved by the Council in 2011. For a complete understanding of those Ordinances, the Administration urges the Council to consider the Administration's reports from June and December 2010, April 2011 and September 2011 which can be easily accessed and found on the City's Medical Marijuana website located at: http://www.sanjoseca.gov/index.aspx?NID=3211.

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district permitting Collectives. The Administration recommends the zoning districts remain CG, DPC, LI and CIC for two reasons. First, they provide reasonable opportunities for Collectives that balance considerations such as land use compatibility with the need to preserve employment lands. Second, they are based on Council deliberations dating as far back as June 2010.

Cultivation (Off-site and Within City Limits)

The Council also directed that Collectives be allowed to cultivate off-site, at a location separate from the dispensing location, within the City. Accordingly, a distinct use of off-site cultivation in the CIC, LI, and HI-Heavy Industrial zoning districts is included in the updated Land Use Ordinance. Off-site cultivation is also included in the updated Regulatory Ordinance. In fact, in light of the Enforcement Memorandum from the U.S. Attorney General, the direction of Council to comply with the guidelines in the Enforcement Memorandum and the recent representations that some of the marijuana dispensed by Collectives may come from "cartels," the updated Regulatory Ordinance also contains sufficient controls to ensure that only medical marijuana cultivated by the Collective is dispensed by the Collective. To provide some level of flexibility, the updated Regulatory Ordinance also provides the option for a Collective to cultivate on-site, at the dispensing location, instead. In short, each Collective would be allowed one cultivation site within the City; the cultivation site could either be combined with the Collective's dispensing location or exist at an entirely separate location.

Although, Council directed off-sale of medical marijuana be allowed as an incidental use at cultivation-only sites, the Administration is recommending against this approach. Unlike wineries or breweries, where incidental sales and/or tasting could occur, the Administration is recommending that no dispensing of any sort occur at a cultivation-only location. This recommendation ensures that the dispensing locations remain clear for enforcement purposes.

Distance Requirements (Buffers)

The Council directed that certain distances between identified sensitive uses and Collectives be maintained. The Planning Commission and the Administration support all of the buffers directed by Council. Additionally, they align with the Planning Commission's recommendations from 2011. However, the Council and the Planning Commission support measuring the required distance between Collectives and Residential Uses by using the foot path of travel. The Administration recommends against this approach for two reasons. First, all distance requirements in the Code are measured using a straight line between the lot lines of each parcel. Measuring any other way would be inconsistent with the rest of the Code. Additionally, staff is currently able to check compliance with the buffers using GIS mapping, provided the distance is measured using a straight line. No such mapping is available to staff to calculate what the distance would be using the foot path of travel. Consequently, staff would need to physically inspect each location and walk the distance to ensure compliance with the updated Land Use Ordinance before staff could issue a zoning verification certificate. Staff would also require further direction from Council on how the foot path of travel is actually measured; for example, from lot line to lot line of each parcel.

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Exploring Greater Distances

The Administration was also directed to explore increasing the distance between Collectives and residential uses to 1,000 feet or 1 mile; however, of all of the above distance requirements, the distance to Residential Use is the most limiting for Collectives. This limitation is due to the predominant land use in San José being residential. Therefore an expansion of the 150 foot buffer would result in a de facto ban on Collectives in the City.

The Administration also explored scenarios for a prohibition around assembly uses and 1,000 feet from all sensitive uses (e.g., residential and school uses). The Administration does not recommend expanding the buffers directed by Council for two reasons. First, assembly uses would be difficult to map and subsequently enforce. In addition, a 1,000 foot buffer between Collectives and *all* sensitive uses would effectively ban Collectives from most parts of San José.

Number of Parcels Available

Based on the best available data for the sensitive uses and restrictions listed above, staff estimates at least 135 parcels could be eligible as a location for Collectives from which to dispense and/or cultivate medical marijuana. Below is the estimated breakdown by zoning district:

- DC-Downtown Primary Commercial: 0
- CG-Commercial General: 55
- CIC-Combined Industrial/Commercial: 3
- LI-Light Industrial: 77
- Industrial Park: to be provided by staff at the Council meeting
- HI-Heavy Industrial: to be provided by staff at the Council meeting

Given that property owners may apply for property rezoning and that sensitive uses may establish and/or relocate over time, these estimates are approximate for decision-making purposes only. If the updated Ordinances are approved by the Council, specific sites would need to be evaluated against all of the criteria through the zoning verification certificate process directed by the Council.

The Regulatory Ordinance (Who Will Operate and How)

As directed by Council, the updated Regulatory Ordinance complies with the Attorney General Enforcement Memorandum in that it includes provisions which tightly regulate the Collectives; allow for the tracking of revenues from the transfer of medical marijuana; prevent the diversion of medical marijuana outside the regulated system; prohibit access of medical marijuana to minors; prevent the diversion of medical marijuana to minors; call for the auditing of Collectives' records and books; and prohibit for-profit operations. The updated Regulatory Ordinance also allows for off-site cultivation of medical marijuana; prohibits on-site

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consumption of medical marijuana; prohibits the resale of medical marijuana by Collective members to members of the public; and, includes a registration process which requires Collective owners, managers, and cultivators to be identified and back-grounded; an on-site designated representative to respond to inspections and community concerns; a security plan with licensed and trained security personnel, security cameras and a security and fire alarm; a cultivation plan, where chemicals used are identified; an operations plan, where management and supervisors are identified; a site floor plan; and, an odor management plan. Finally the updated Regulatory Ordinance regulates how the medical marijuana is packaged; prohibits the Collective from allowing anyone with a certain criminal history to participate in the cultivation, manufacture, dispensing or transporting of medical marijuana; ; requires all members to agree to not distribute medical marijuana to anyone outside of the Collective; limits the hours the Collectives can be open to the public from 9:00 a.m. to 9:00 p.m.; provides for a full cost-recovery regulatory program; and provides that only those Collectives located in the proper zone, paying the MBT and with no history of code violations or public nuisance activity can register as a Collective with the City. In an effort to maintain consistency with all other businesses regulated in the City, the Regulatory Ordinance has been updated to provide that a Collective will be disqualified from the registration process if the Collective or any of its owners or managers have owned or leased a location that has been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the location or premises to be a nuisance within the past five (5) years (versus the Council directed 3 or more documented or verified code violations and/or nuisance activities within one year of requesting registration.)

For the reasons set forth above, the Administration recommends approval of the proposed Ordinances which update the 2011 Ordinances (previously approved by the Council) as reflected in this memorandum. Together, the updated Ordinances create a comprehensive and robust medical marijuana program that is the result of over a three year-long collaboration to address the concerns of the Council, the stakeholders, law enforcement agencies and the community.

Other Items Explored

The Administration was also directed to explore a number of other options as discussed below.

- Underage Decoy Program: Neither the Police Department nor the Administration can recommend such a program as it would require minors to engage in the purchase, possession and transportation of something that is considered a Schedule 1 Controlled Substance that remains illegal under Federal law.
- Restrictions On Advertising of Collectives: This issue will be discussed in a separate memorandum issued by the City Attorney's Office.
- Prohibitions On Candidates Accepting Contributions From Collectives: This issue will be discussed in a separate memorandum issued by the City Attorney's Office.

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• Back-grounding Collectives through the Inspector General's Office: The Office of the Inspector General regulates the state's correctional system—in effect, to act as the eyes and ears of the public in overseeing the state's prisons and correctional programs. Consequently, there would be no basis for the City to check in with this particular agency when back grounding a Collective or its members.

EVALUATION AND FOLLOW-UP

Any amendments to the Ordinances that the Administration believes are necessary will be formally presented to the City Council for review and approval. Although the ordinances proposed by the Administration are the direct reflection of the will of the Council, some Collectives will disagree with the requirements contained in them as the requirements may not be conducive to the business plan those Collectives already have in place. While the Administration will continue to work with the Collectives during implementation of the regulations to address their concerns, in the event that any Collective remains dissatisfied with a component of the Program and challenges the legality of that component in a court of law, the Administration will work with the Council to explore options available to the City, including a ban on Collectives while the Council determines whether it wants to continue to expend City resources on developing a program that will ultimately be acceptable to each and every Collective.

POLICY ALTERNATIVES

Alternative #1: Do not approve the ordinances developed at the direction of Council.

Pros: The City staff will not be tasked with the job of regulating the Collectives.

Cons: The City will not be responding to the concerns of the United States Attorney General, the stakeholders and the community.

Reason for not recommending: The City has expressed an interest in supporting the compassionate use laws of the state but has grappled with how to regulate dispensaries for almost four years. The City needs to take action.

Alternative #2: Do not approve the ordinances and direct the staff to return with a complete ban on all Collectives operating in San José.

Pros: The City staff will not be tasked with the job of enforcing regulations and can focus on shutting them down.

Cons: The City will not be responding to the stakeholder's request for safe access to medical marijuana.

Reason for not recommending: The City has expressed an interest in supporting the compassionate use laws of the state but has grappled with how to regulate dispensaries for almost four years. The City needs to take action.

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PUBLIC OUTREACH/INTEREST

	Criteria 1: Requires Council action on the use of public funds equal to \$1 million or
	greater. (Required: Website Posting)
V	Criteria 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
	Criteria 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This issue falls under the Community Engagement Policy established by the City Council. Substantial community outreach and engagement has been conducted to obtain input. The proposed ordinances will also be posted on the Clerk's agenda webpage and a separate website has been developed that provides an inventory on all materials published by the City during the course of its consideration of this Program.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

If the recommended ordinances are approved, the Administration will return with an MBA to identify resources needed to appropriately staff the program for registration and enforcement of the regulations including personnel needed by the Police Department, the Department of Planning, Building and Code Enforcement, the Finance Department, the City Attorney's Office and the City Manager's Office.

CEQA

The environmental impacts of land use regulations for Medical Marijuana Collectives were originally addressed by an Initial Study and documented by a Negative Declaration (ND) under file number PP11-039, and certified as final on June 15, 2011. In addition, Addendum PP11-076 for the original Title 6 Medical Marijuana regulatory program was certified as final on September 1, 2011. Based on the proposed changes to the Code as described in this report, another Addendum has been prepared under file number PP14-030 because the proposed ordinance contains the same or greater buffer setbacks from sensitive receptors, thereby creating

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the same or lesser environmental impacts to the population. The addition of cultivation as a potential allowed use would not create new significant impacts because the cultivation use would be regulated with controls to comply with the United States Attorney General's Enforcement Memorandum and protect existing uses from negative impacts. This Addendum was prepared pursuant to Section 15164 of the CEQA Guidelines.

/s/ ANGELIQUE GAETA Assistant to the City Manager /s/ HARRY FREITAS Director, Planning, Building & Code Enforcement

/s/ LARRY ESQUIVEL Chief of Police

For questions please contact Angelique Gaeta, Assistant to the City Manager, at (408) 535-8253.

ATTACHMENT "A" MEDICAL MARIJUANA APRIL 29, 2014 MEMORANDUM

ISSUE	COUNCIL DIRECTION	PLANNING COMMISSION RECOMMENDATION	ADMINISTRATION RECOMMENDATION
*Zoning Districts (Dispensaries)	 CG-Commercial General; DPC-Downtown Primary Commercial; LI-Light Industrial; CIC-Combined Industrial Commercial; and Possibly IP-Industrial Park 	 CG-Commercial General; DPC-Downtown Primary Commercial; LI-Light Industrial; CIC-Combined Industrial Commercial; IP-Industrial Park CN-Commercial Neighborhood CO-Commercial Office 	 CG-Commercial General; DPC-Downtown Primary Commercial; LI-Light Industrial; CIC-Combined Industrial Commercial
*Zoning Districts (Off-Site Cultivation)	 LI-Light Industrial; CIC-Combined Industrial Commercial HI-Heavy Industrial 	Same as Council	Same as Council but with limitation footnoted below.

^{*} The Administration is recommending that medical marijuana be dispensed from one location only and that cultivation, whether off-site or on-site, occur at one location only. The medical marijuana dispensing location can be the same as the medical marijuana cultivation location or they can each be separate sites.

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ISSUE	COUNCIL DIRECTION	PLANNING COMMISSION RECOMMENDATION	ADMINISTRATION RECOMMENDATION
Requirements For Minimum Distance From Sensitive Uses	 1,000 Feet From Public And Private Schools, Child Daycare Centers, Houses Of Worship, Community/Recreation Centers, Parks, Libraries And Other Collectives; 500 Feet From Substance Abuse Rehabilitation Centers; And 150 Feet From Residential Uses* *Foot-path of travel 	Same as Council	 1,000 Feet From Public And Private Schools, Child Daycare Centers, Houses Of Worship, Community/Recreation Centers, Parks, Libraries And Other Collectives; 500 Feet From Substance Abuse Rehabilitation Centers; And 150 Feet From Residential Uses*